Local Union No. 18 of Sheet Metal Workers' International Association *and* TOTAL Mechanical and Local Union 601 Steamfitters and Refrigeration/Service Fitters. Case 30–CD–078120

January 30, 2013

DECISION AND ORDER QUASHING NOTICE OF HEARING

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

The charge in this Section 10(k) proceeding was filed on April 4, 2012, by TOTAL Mechanical (the Employer), alleging that the Respondent, Local Union No. 18 of Sheet Metal Workers' International Association (Local 18), violated Section 8(b)(4)(D) of the National Labor Relations Act (the Act) by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees Local 18 represents rather than to employees represented by Local Union 601 Steamfitters and Refrigeration/Service Fitters (Local 601). The hearing was held on April 27, 2012, before Hearing Officer Andrew S. Gollin.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer is an HVAC contractor based in Pewaukee, Wisconsin, and that during 2011, a representative period, the Employer purchased and received goods and services valued in excess of $50,000 directly from suppliers located outside the State of Wisconsin. The parties further stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 18 and Local 601 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer provides residential and commercial heating, ventilating, and air-conditioning service for customers throughout Wisconsin. The Employer employs 30–40 service technicians. Some of the technicians are represented by Local 18 and others are represented by Local 601. The Employer variously assigns work to either group of represented employees based upon considerations including the technicians' availability, their skill level, their geographic proximity, and the customer's relationship with particular technicians.

The Employer is a member of the Plumbing and Mechanical Contractors' Association of Milwaukee and Southeastern Wisconsin (PMC). The PMC is signatory to a collective-bargaining agreement with Local 601. The Employer is also a member of the Milwaukee Chapter of the Sheet Metal and Air Conditioning Contractors' Association of Milwaukee (SMACCA), which has a collective-bargaining agreement with Local 18. Both agreements were effective from June 1, 2011 to May 31, 2012. In addition, the Employer is party to the national service and maintenance agreement (NSMA), a nationwide agreement negotiated between the Mechanical Service Contractors of America (MSCA) and the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO (UA) (Local 601 is affiliated with the UA). The NSMA is effective from August 1, 2010 to July 31, 2015. All three agreements cover service technician work of the kind performed by the Employer.[1]

On February 21, 2011,[2] Local 601 and the PMC bargaining committee met over dinner to discuss their upcoming negotiations for a new local agreement. Local 601 was represented by its business manager, Kevin LaMere, and its financial secretary, Joel Zielke. PMC was represented by its executive director, Peter Lentz, and Tim Braun, the head of the Employer's service department. During this meeting, the parties discussed a variety of issues. Lentz testified that at some point the discussion turned to rumors that Local 601 had changed its position regarding the assignment of Local 18 members to service technician work. According to Lentz,

[1] PMC's agreement with Local 601 covers "[T]he rate of pay, hours, and working conditions of all Employees engaged in the installation and service of all refrigeration, HVAC and Mechanical systems and component parts related to this Industry. . . ."

SMACCA's agreement with Local 18 covers "employees of the employer engaged in the manufacture[,] fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work . . . and all air-veyor systems and air handling systems . . . and all other work included in the jurisdictional claims of Sheet Metal Workers' International Association."

The NSMA agreement provides that "[t]his Agreement shall apply to and cover all work performed by the Employer, and all its subsidiaries and branches in the United States, in order to keep existing mechanical, refrigeration and plumbing systems within occupied facilities operating in an efficient manner. This work shall include the inspection, service, maintenance, start-up, testing, balancing, adjusting, repair, modification and replacement of mechanical refrigeration or plumbing equipment including related piping connections and controls in addition to all other service, maintenance and operations work in order to meet customer obligations."

[2] All dates refer to 2011, unless otherwise indicated.

LaMere stated that "service work is our work" and that the NSMA "clearly provides that it . . . is our work."

Braun testified that LaMere stated that the contractors were "in violation of their contract" by using Local 18 members to perform the service work, that "the contract very specifically states that [the contractors] have to use UA members only," and "that [the contractors] needed to basically get rid of [their] Local 18 guys to stay within compliance." According to Braun, LaMere added that he "would be more than willing to open his arms" to the Local 18 technicians and bring them into Local 601.

LaMere testified that during this conversation he offered his "opinion of the national service agreement," and that he "was not speaking of any contractor sitting at the table or any contractor in the local agreement, and was only referring to the signatory contractors of the national service agreement." LaMere stressed in his testimony that he gave his opinion that the national agreement prohibits signatory contractors from using Local 18-represented employees for their service technician work. LaMere further testified that, in response to a question by Braun about what the Employer should do with its Local 18-represented employees if the technician work was assigned exclusively to members of the UA, he responded that Local 601 had "a way to organize [those employees] into our association." LaMere denied demanding that any specific work be assigned exclusively to employees represented by Local 601.

On March 1, Lentz and Braun met with Local 18 Business Manager Pat Landgraf. Lentz testified that he told Landgraf that "contractors were now faced with a possible decision or probable decision of having to not use Local 18 workers anymore for doing service work." He said Landgraf responded that he would not stand for that, that Local 18 would fight for its jurisdiction and do whatever it needs to do, and that the Employer was going to see picket lines.[3]

On March 21, Lentz sent a letter to Landgraf stating that "Local 601 Steamfitters officials have advised the contractors who serve on the contractors' association labor committee that the NSMA provides that contractors who are signatory to NSMA may only use employees represented by UA-affiliated unions for service work" and that "the contractors have taken the position that those employers may have to assign service work solely to UA-affiliated workers in the future."

By letter dated March 26, Landgraf responded to Lentz that service work is "covered by our labor agreement and historically performed by employees represented by Local 18," and that, if "this work is assigned exclusively to employees represented by another union, we will picket the Association contractors and engage in other activities in order to protect our jurisdiction."

[3] Landgraf testified that he did not mention anything about strikes during this meeting, and that he told Lentz to "seek out counsel because there were avenues."

B. Work in Dispute

The Employer and Local 18 assert that the work in dispute is as follows:

> Service technician work on TOTAL Mechanical jobs for commercial, industrial and residential customers in the Wisconsin counties of: Milwaukee, Ozaukee, Washington, Waukesha, Green, Jefferson, Lafayette, Rock, Columbia, Dane, Iowa, Marquette, Richland, Sauk ("Fourteen County WI Area"). Service technicians perform work to keep operational mechanical and HVAC systems and equipment within occupied facilities including inspection, service maintenance, start-up, testing, balancing, adjusting, repairing, modifying and replacing mechanical and HVAC equipment.

Local 601 contends that there are no competing claims for any work assignments but, if there were, the above description would be accurate.[4]

C. Contentions of the Parties

Local 601 moves to quash the notice of hearing, contending that there are no actual competing claims for any assignment of work. Local 601 argues that, rather than demanding an exclusive assignment of work for Local 601 members, LaMere only offered his personal opinion of what the NSMA requires. Local 601 further contends that Local 18 and the Employer contrived the threat to picket in order to invoke the Board's 10(k) process.

The Employer and Local 18 oppose Local 601's motion, contending that there is reasonable cause to believe that there are competing claims to work in dispute and that Section 8(b)(4)(D) has been violated. In particular, they contend that LaMere's statement at the dinner meeting on February 21 conveyed a demand that the Employer assign all of its service technician work exclusively to employees represented by Local 601, and that Local 18 threatened to picket the Employer if it acquiesced to Local 601's demand. The Employer and Local 18 further contend that the work in dispute should continue to be assigned to employees represented by both unions based on the factors of certifications and collective-bargaining agreements, employer preference and past practice, area and industry practice, relative skills, and economy and efficiency of the operations.

[4] As discussed below, we find, in agreement with Local 601, that there is no work in dispute.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be established that: (1) there are competing claims for the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute.[5] On the record before us, we are not satisfied that these factors have been established. Specifically, we find that the record fails to establish reasonable cause to believe that there are competing claims for any disputed work.

A work dispute under Section 8(b)(4)(D) requires a choice between two competing groups, and there must be "either an attempt to take a work assignment away from another group, or to obtain the assignment rather than have it given to the other group." *Food & Commercial Workers Local 1222 (FedMart Stores)*, 262 NLRB 817, 819 (1982), quoting *Communications Workers (Mountain States Telephone)*, 118 NLRB 1104, 1107–1108 (1957). Section 8(b)(4)(D) and Section 10(k) are not intended to cover situations that are representational in nature. *Glass & Pottery Workers Local 421 (A-CMI Michigan Casting Center)*, 324 NLRB 670, 673–674 (1997) (granting motion to quash where essence of dispute did not involve an attempt to take a work assignment away from a particular group of employees). Rather, they are intended to deal with "disputes between two or more competing employee groups claiming the right to perform certain tasks." *Teamsters Local 522 (Skyline Windows)*, 307 NLRB 479, 480 (1992) (finding correspondence among the unions "did not ripen into competing claims for the work").

Here, there is no evidence of an attempt (or demand) to have any particular work reassigned to another group of employees. Rather, the record shows that, at a dinner meeting attended by representatives of the Employer and Local 601, the parties merely discussed preliminary issues relevant to their upcoming negotiation for a new local contract. No particular project or work assignment was discussed at this meeting, and there is no testimony that LaMere demanded that any particular work be performed exclusively by employees represented by Local 601.

The Employer and Local 18 contend that a work dispute is evinced by LaMere's statements regarding the requirements of the NSMA. According to Lentz and Braun, LaMere stated that the use of employees represented by Local 18 would violate the terms of the NSMA agreement [not their local agreement] and, according to Braun, LaMere also said "basically" that contractors needed to "get rid" of their Local 18-represented employees to stay in compliance with the agreement. These statements are very general and, at most, demonstrate LaMere's interpretation of the NSMA. They do not include a reference to any particular work or assignment of work. Indeed, LaMere testified that he was only offering an opinion of what the NSMA provides and was not speaking of any contractor sitting at the table.[6]

The Employer and Local 18 further rely on testimony indicating that LaMere conveyed that he would welcome Local 18-represented technicians as members in Local 601. LaMere's comments in this regard were apparently made in response to a hypothetical question about what would happen if–in the future–work was assigned exclusively to employees represented by Local 601. If anything, this remark appears to implicate a representational issue and, as such, is not the type of matter that Section 10(k) was designed to address. *Glass & Pottery Workers Local 421*, supra at 673–674. In any event, the statement did not convey a demand for an assignment of any particular work.

As the record before us fails to reference any dispute over an assignment of work to one group of employees rather than another, we find that the requirement for competing claims for work has not been met. Accordingly, and on this basis, we grant the motion to quash the notice of hearing. See generally *Machinists, District 9 (Anheuser-Busch, Inc.)*, 101 NLRB 346, 351 (1952) (quashing notice of hearing where dispute concerned the incorporation of a contractual provision and not a "*present* demand for the assignment of work"); *International Typographical Union & Pueblo Typographical Union, Local 175 (Rocky Mountain Bank)*, 145 NLRB 921, 923–924 (1964) (quashing notice of hearing where dispute was over terms of a collective-bargaining agreement and not over the assignment of work).[7]

[5] *Carpenters Local 275 (Lymo Construction Co.),* 334 NLRB 422, 423 (2001); *Teamsters Local 259 (Globe Newspaper Co.),* 327 NLRB 619, 622 (1999); *Laborers Local 113 (Super Excavators),* 327 NLRB 113, 114 (1998).

[6] Moreover, the context in which the conversation took place–i.e., a discussion of preliminary issues in advance of formal negotiations for their local agreement–suggests that LaMere's purpose was more likely to convey a position relevant to the upcoming negotiations rather than a demand that any specific work be reassigned to employees represented by Local 601.

[7] Because the record fails to show that there is actual work in dispute, we find it unnecessary to pass on Local 601's contention that Local 18's threat to picket was contrived.

ORDER

It is ordered that the notice of hearing issued in this case is quashed.

Dated, Washington, D.C. January 30, 2013

Mark Gaston Pearce, Chairman
Richard F. Griffin, Jr., Member
Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD